

17-20067

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGANFILED
CLERK'S OFFICE

APR 23 2025

Alxleotold Gordon

Vs.

United States of America

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No.: 2:17-CR-20067(2)

U.S DISTRICT COURT
EASTERN MICHIGAN18 U.S.C. §3582(c)(2) Pro-Se Motion
AMENDMENT 782 Drug + 2

On Jun 19, 2018 Alxleotold Gordon was sentence to 300 months for a violation of 21 USC §841(a)(1), §841(b)(1)(C) "Distribution of a controlled substance;" death resulting Ct2S; "Possession of a controlled substance with intent to distribute" CT4S. No Drugs in CT2S or CT4S. (See Indictment).

Amedment 782 reduced the base offense level by **two** levels for most drugs offenses. **Huges v. United States**, 584 U.S. 675 (2018). See §2D1.1(C)(15)(assigning a base offense level of 10 for **(No Drugs)**).

Alxleotold Gordon argues that allowing the jdge to find a defendant responsible fo the maximum quantity of drugs that can plausibly be found could result in defendant receiving **excessive** sentences based on a finding of quantity that is more likely than **not** excessive. Such a result will violate Alxleotold Gordon due process rights **(as in this case)**. See **Townsend v. Burke**, 334 U.S. 736 (1948)(Sentence may **not** be based on **materially false** information).

P R E S E N T E N C E R E P O R T

Alxleotold Gordon argues that the federal rules require the court to hold a hearing to determine disputed isssues of fact included in the **Presentence Report** if it wishes to **rely** upon these facts in sentencing. **Fed.R.Crim.P. 32(c)(3)(D)**. The purpose of this hearing though, is to ensure merely that the information relied upon is **not** materially false. Determining that information is **not** materially false **does not** require any type of heightened scrutiny. It is enough that the sentencing judge is convinced that the disputed facts, as

alleged, is true. While this result in an underestimation of the quantity of drugs involved. It is nonetheless Constitutionally required to prevent **excessive sentences**. See **United States v. Walton**, 908 F. 2d 1289 (6th Cir. 1990)(when choosing between a number of plausible estimates of drug quantity, none of which is more likely than **not** the correct quantity, a court must err on the side of caution). See **United States v. Whelan**, 396 F.App'X 197 (6th Cir. 2010)(erring on the site of caution)

E V I D E N C E

Alxleotold Gordon argues that it was the government burden at sentencing to establish the quantity of drugs **involved** in the offense by a preponderance of evidence. See **United States v. Russell**, 545 F. 3d 633 (6th Cir. 2010). Alxleotold Gordon argues that the district judge calculate hi base offense level using its **own** amounts of drugs amounts, **without** explaining its reasons for doing so, and thereby increased Alxleotold Gordon sentence. Such hidden **judicial fact-finding** has devastating consequences for the actual and perceived fairness of our criminal justice system. See **Rosales-Mireles v. United States**, 138 S.Ct. 1847 (2018)(regardless of its ultimate reasonableness, a sentence that lacks **reliability** of unjust procedures may well undermine public perception of the proceedings.

G U E S S W O R K

Alxleotold Gordon argues that the need to **estimate drug quantities** at times is **not** a license to calculate drug quantities by guesswork. See **United States v. Richards**, 27 F. 3d 465 (10th Cir. 1994).

Estimates of drug quantities are not necessarily **forbidden**. Alxleotold Gordon argues that the estimates must, have some basics of **support** in the **facts** of the particular case. See **United States V. Garcia**, 994 F. 2d 1499 (10th Cir. 1993). The estimates must, have some basis of support in the **facts** of the case. When choosing between a number of **pausable estimates** of drug quantity, **none** of which is **more** likely than **not** the correct quantity, the **judge** must err on the site of caution. Alxleotold Gordon argues that the sentencing commission clearly expressed its **intent** that **unreliable allegations** shall **not** be considered. **§6A1.3**.

Alxleotold Gordon has a due process right **not** to be sentenced on the basis of materially incorrect information. **United States v. Tucker**, 404 U.S. 443 (1972). Alexleotold Gordon argues that some **minimal** indication of **reliability** must accompany a hearsay statement, **other than mere allegation**, before it may be relied upon in sentencing. **United States v. Beauliey**, 843 F. 2d 1177 (10th Cir. 1990).

Alxleotold Gordon argues that there is only one transaction **date** in the indictment. **(See Indictment)**. The district judge evidently believed that because of the Presentence Report (PSR) provided reliable information, he could rely on it regarding the quantity of **drugs** distributed without any independent corroboration. This is contrary to the sentencing commission's intent expressed in the commentary to **§6A1.3**. The district judge's finding that Alxleotold Gordon is responsible for any drugs **is clearly erroneous**.

Alxleotold Gordon argues that recognition of the need to **estimate drug** quantities at times is **not** a license to calculate drug quantities **by gesswork**. See **United States v. Paulino**, 996 F. 2d 1541 (3d Cir. 1993).

S E N T E N C I N G

Alxleotold Gordon argues that in calculating a defendant's base offense level under the sentencing guidelines, the sentencing judge must consider types and quantities of drugs **not** specified in the **counts** of conviction but that were part of the **same** course of **conduct** or common scheme or plan as the convicted offense. **§1B1.3(a)(2)**.

Alxleotold Gordon argues that **any act used** to **enhance** a defendant's sentence **must** be part of the same course of conduct or common scheme or plan as the offense of conviction. **§1B1.3(a)(2)**. Section 1B1.3(a)(2) should **not** be applied to offenses that are of the **same kind**, but **not** encompassed in the **same** course of conduct or plan as the convicted offenses. The sentencing court are thus required to explicitly **state** and support, **either** at the sentencing hearing **or** (preferably) in a **written** statement of reasons, the finding that the unconvicted activities **bore** the necessary **relation** to the convicted offense.

B U R D E N S O F P R O O F " P R O S E C U T I O N "

Alxleontold Gordon argues that the government bears the burden of establishing the quantity of drugs by a preponderance of evidence.

**REASON FOR AMENDMENT 782
THE PERTINENT GUIDELINES AND POLICY STATEMENT**

The sentencing commission, itself, expressly stated that the purpose of amendment 782 was to **change** how the applicable **statutory minimum** penalties are **incorporated** into the **drug quantity table** while **maintaining consistency with such penalties**, and that it served this purpose by reducing by **two levels** the **offense levels** assigned to the **quantities** that **trigger** the **statutory mandatory minimum** penalties, **resulting in corresponding guideline ranges** that **include** the **mandatory minimum** penalties. **United States Sentencing Commission. Federal Sentencing Guidelines Manual. Vol.3, Amendment 782. Reason for Amendment.**

As the sentencing commission explained, more fully, this amendment changes how the applicable **Statutory Mandatory Minimum** penalties are incorporated into the **Drug Quantity Table** while maintaining consistency **with such penalties**. See **28 USC §994(b)(1)** (providing that each sentencing range **must** be consistent with all pertinent provisions of title 18, United States Code); See also **28 USC §994(a)** (providing that the commission shall promulgate guidelines and policy statements consistent with all pertinent provisions of any federal statute).

Alxleotold Gordon knows that amendment 782 **does** absolutely **nothing** to reduce the drug quantity that triggers a mandatory minimum.

E X A M P L E

The amendment reduces by **two levels** the offense levels assigned to the quantities that trigger the **statutory mandatory minimum** penalties, resulting in corresponding guideline ranges that **include** the mandatory minimum penalties. Offenses **involving** drug quantities that trigger a **five years** statutory minimum are assigned a **base level** of **24** (51-63) months a criminal History category 1, which includes the five-year (60 month) statutory minimum for such offenses, and offenses **involving** drug quantities that trigger a ten-year statutory minimum are assigned a base offense level of **30** (97-121 months of criminal history category 1, which includes ten-years (120 months) statutory minimum for such offenses. Offense levels for quantities **above** and **below** the mandatory minimum **threshold quantities** similarly are adjusted **downward by two levels**, except that the **minimum** base offense level of **6** and the **maximum** base offense level of **38** for most drug types is retained, as are

previously **existing** minimum and maximum base offense levels for **particular drug types**. **United States Sentencing Commission, Federal Sentencing Guidelines Manual, Vol.3. Amendment 782. Reason for Amendment.**

**NON-DELEGATION AND SEPARATION-OF-POWER
"ULTRA VIVES"**

Unauthorized: beyond the scope of power allowed or granted. See Blak's Law Dictionary. See **Mistretta v. United States**, 488 U.S. 361 (1989).

Alxleotold Gordon argues that the **integrity** and the maintenance of the system of government ordained by the Constitution mandate that Congress **cannot delegate** its legislative power to another Branch. 488 U.S. at 371-72; **Field v. Clark**, 143 U.S. 649 (1892).

R E L I E F R E Q U E S T

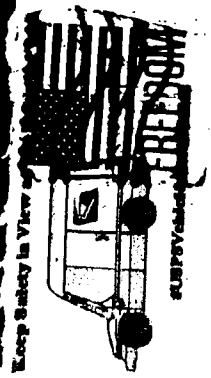
To GRANT my Pro-Se **§3582(c)(2)** Amendment 782 Drug + 2 Motion to Base Level **6, 0-6 months** or to **Time Serve**. Base on the indictment in count 2 of the indictment. **No Drugs. (See Indictment).**

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